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No-Fault Auto Insurance Changes Are Here

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For many years, interested parties have attempted to change Michigan's AUTOMOBILE NO-FAULT LAW to benefit various competing interests. The current impetus for change is the unlimited nature of personal injury protection (PIP) under the No-Fault Statute. Michigan is the only state with unlimited PIP protection. This unlimited PIP has led to higher auto insurance rates in Michigan. Those who have benefitted from this unlimited coverage, including patients and healthcare providers, are potentially hurt by a reduction in PIP coverage through reduced benefits and reduced payment for those benefits. The beneficiaries are insurance companies and consumers who do not suffer a serious or traumatic injury and who pay lower rates. The reform also mandates reductions in auto insurance premiums. Medicaid and other health insurers could be hurt by the liabilities previously covered by PIP being shifted to other programs.

Current Legislation

The Governor signed the new legislation on May 30, 2019, after the legislation overwhelmingly passed both the Senate and House. Amendatory legislation has also passed correcting errors in the original legislation. The new law mostly takes effect in July of 2020.

Debate

The crux of the debate about this reform was who should pay the cost for those people catastrophically injured in an automobile accident? Prior to the amendment, the auto insurers charged premiums for the lifetime benefit to be provided and every insured driver in Michigan shared in this cost. As a result of Michigan is the only state which required a lifetime PIP benefit, the resulting premiums for auto insurance are higher in Michigan than elsewhere.

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Should commercial health insurers cover the catastrophic benefit? Even if the answer is “yes”, this only covers the medical benefit. People who suffer traumatic brain or spinal cord injuries may require residential care and commensurate services in addition to healthcare services – and some of those injured people may need a lifetime of care.

Further, automobile insurance would no longer cover the lifetime income loss, residential care, and other possible lifetime expenses. That does not mean that there is no liability for those losses. So individuals, as well as businesses, should purchase additional liability coverage. Whether this cost will offset the savings on auto insurance premiums is one of the questions being asked.

Arguments are made that providers of health care services receive a higher level of reimbursement or payment for catastrophic care than they receive for the same services provided to others not injured in an automobile accident. The new law mandates that the charges by providers be paid according to a schedule in relation to Medicare reimbursement.

Under the reform, insured drivers will be able to select a level of no-fault coverage. This seems like a fair approach as it gives consumers a choice of coverage based on how much auto insurance premium the consumer wishes to pay. The unfortunate truth, however, is that consumers are likely to select the cheapest option as the consumer will think that the catastrophic event always happens to someone else, and will wrongly assume that they are covered by their health insurance for injuries they receive and that insurance will cover all of their expenses. Although minimum limits of liability have been raised to \$50,000/100,000 this is minuscule in relation to the costs of care. A new default residual bodily injury limit of \$250,000/500,000 will be offered to drivers. Also, now a person injured in a car accident will be able to sue others for excess medical and economic expenses. There is a new definition of what is meant by a serious impairment of bodily function in order to sue for pain and suffering. A serious impairment of bodily function is defined as an impairment that “is objectively manifested, meaning it is observable or perceivable from actual symptoms or conditions by someone other than the injured person, is an impairment of an important body function which is a body function of great value, significance or consequence to the injured person, affects the injured persons general ability to lead his or her normal life, meaning it has had an influence on some of the person’s capacity to live in his or her normal manner of living. This new definition takes effect immediately.

Insurance is a highly regulated and complex market. No one wants to pay more for auto or other insurance than they have to pay. Michigan insureds have had to pay relatively high premiums compared to the rest of the country at least, in part, because of the lifetime benefit. In addition, the Michigan Catastrophic Claims Association has established a fund reported to be in the area of \$20 billion. Who will benefit from this fund if the lifetime benefit is eliminated? The proposed legislation is not entirely clear on this point. Consumers may receive some portion if they elect to buy lifetime no-fault coverage. Insurance companies may also benefit from this fund if it is distributed.

Bullet Point Summary of New Law

- PIP choice for consumers after July 1, 2020, from \$50,000 for those covered by Medicaid then \$250,000, \$500,000 or no limit.

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- Opt out of PIP medical benefits if have Medicare coverage.
- Savings on auto premiums at all PIP benefit levels.
- Savings for auto insurance companies.
- Michigan Catastrophic Claims Association would continue to be liable for catastrophic injury benefits for policies issued before July 2, 2020, and for drivers on policies issued after July 2, 2020, for those electing the unlimited no-fault benefit. There will be refunds to drivers if actuarially MCCA assets exceed 120% of liabilities.
- There will be a no-fault medical benefit fee schedule based on Medicare fee schedule. Reimbursement will range from 190% to 250% of amounts payable under Medicare. This schedule will apply to treatment or rehabilitative occupational training after July 1, 2021.
- Savings generated by the fee schedule is to be passed along to consumers with lower premiums.
- Certain non-driving factors may no longer be considered in rating auto insurance premiums including factors such as sex, marital status, home ownership, education level, occupation, and postal zone.
- Mini tort law maximum raised immediately to \$3,000 from \$1,000.
- The claims for benefits will be tolled as of the date of the claim although there are certain conditions.
- New rules imposed on independent medical exams.
- There are limits on attendant care by family attendants for insurers not to pay for more than 56 hours per week.
- A new anti-fraud unit is established.
- Insurance commission involvement for non-payment of benefits.
- There are higher liability limits required on auto insurance.
- Permissible suits for excess medical benefits.
- A new definition of serious impairment of bodily functions.

Conclusion

Some reforms to Michigan's no-fault law were clearly in order, but the debate and many questions remain even after passage of the reform. The economic interests are huge, and this legislation is one that impacts everyone—drivers, passengers, insurers, and healthcare providers. Over time we will see if this reform will result in a balance of savings for consumers and insurance companies, as well as provide the benefits for those needing them, and addressing the concerns of providers regarding payment levels. For more information about insurance plan coverage and benefits, or provider payment issues, or other pending legislation, contact your Butzel Long attorney.

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